

REMARKS

Entry of this Amendment is respectfully requested. Claims 1-3, 5, 8-11, 33, 34 and 43-58 stand rejected under 35 USC 102(b) as allegedly anticipated by Kappock. Responsive to this rejection, independent claims 1 and 45 and the dependent claims depending therefrom, have been limited to applicants' preferred weight ratio of metal salt to pyrithione of 1:100 to 1:10, as supported by page 25, line 18 of the instant specification. Kappock doesn't suggest or disclose this range, but rather teaches a higher range of ratios of about 1:10 to about 10:1 on a molar basis. Claims 33 and 43, and the dependent claims depending therefrom, have been directed to composition concentrates as supported by the disclosure provided at page 27, lines 13-22 of the instant specification. Kappock does not disclose or suggest such concentrates. Claim 44 has been limited to silver as the metal. Kappock neither discloses nor suggests the use of silver in patentee's composition.

Claims 1-3, 5, 8, 11, 33, 34 and 43-58 stand rejected under 35 USC 102(b) as allegedly anticipated by Wiese. Wiese requires the presence of thiazolinone as a preservative in his composition, and employs zinc as a preservative stabilizer. Independent claims 1 and 45, and the dependent claims depending therefrom, have been amended to exclude the presence of thiazolinone in the claimed composition. Wiese neither discloses nor suggests compositions that are free of thiazolinone, and indeed such absence runs counter to the teaching of Wiese in favor of zinc as stabilizer for the thiazolinone. Claims 33 and 43, and the dependent claims depending therefrom, have been directed to composition concentrates as supported by the disclosure provided at page 27, lines 13-22 of the instant specification. Wiese does not disclose or suggest such concentrates. Claim 44 has been limited to silver as the metal. Wiese neither discloses nor suggests the use of silver in patentee's composition.

Claims 1-3, 8, 11, 44, 47, 48, 53, 54, 57 and 58 are rejected under 35 USC 102 (b) as allegedly anticipated by Dixon et al. Dixon requires the presence of a strong chelating agent in his compositions. Independent claims 1 and 45, the dependant claims depending therefrom, are hereby amended to limit the composition to be "free of a strong chelating agent", thereby distinguishing over the Dixon compositions. Claim 1 has also been amended to remove the metal (zinc, copper or silver) complexes from that claim. Dixon neither discloses nor suggests compositions not containing a strong chelating agent.

Claims 33 and 43, and the dependent claims depending therefrom, have been directed to composition concentrates as supported by the disclosure provided at page 27, lines 13-22 of the instant specification. Dixon does not disclose or suggest such concentrates. Claim 44 has been limited to silver as the metal. Dixon neither discloses nor suggests the use of silver in patentee's composition.

Claims 1-3, 5, 8, 11, 33, 34, 43-46, 51 and 58 stand rejected under 35 USC 102(b) as allegedly anticipated by Khattar et al. Khattar discloses the effect of 0.01% w/v of zinc chloride on the activity of 0.1% pyrithione in Figure 2. Page 175 of Khattar discloses that the pyrithione used was "pyrithione sodium or sodium omadine" (see top left and bottom left paragraphs of the article). Commercially available sodium OMADINE® product is in aqueous solution containing 40% active pyrithione in water. Note column 6, lines 19-20 of Kappock and page 41, line 10 of the instant specification for reference to the active pyrithione in sodium OMADINE® product. Accordingly, Khattar must have employed only 0.04% of pyrithione in the experiment of Figure 2 based upon the sodium pyrithione material used. Therefore, the ratio of zinc chloride to sodium pyrithione is 1:4 a ratio that does not disclose or suggest the range of ratios of instant claims 1, 45, or the claims depending therefrom. Claims 33 and 43, and the dependent claims depending therefrom, have been directed to composition concentrates as supported by the disclosure provided at page 27, lines 13-22 of the instant specification. Khattar does not disclose or suggest such concentrates. Claim 44 has been limited to silver as the metal. Khattar neither discloses nor suggests the use of silver in patentee's composition.

By this Amendment, claims 1, 33, 34, 43, 44, 45 and 51 have been amended. Accordingly, claims 1-3, 5, 8-11, 33, 34 and 43-58 are presented for further examination. No new matter has been added. By this Amendment, all pending claims are believed to be in condition for allowance.

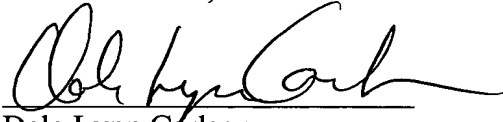
Accordingly, Applicant submits that none of the references, alone or in combination, anticipate or make obvious the invention as presently claimed and that the application is now in condition for allowance. Therefore, Applicant respectfully requests reconsideration of the amended claims and an early receipt of a Notice of Allowance thereof.

If the Examiner has any questions or believes that a discussion with Applicants' attorney would expedite prosecution, the Examiner is invited and encouraged to contact the undersigned at the telephone number below.

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Respectfully submitted,

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